

Supplemental Letter of Findings: 06-0489
Sales and Use Tax
For the Year 2005

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax – Imposition on Aircraft Purchase.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-5-8; IC § 6-2.5-4-10; IC § 6-2.5-2-1; IC § 6-2.5-8-8; [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-15](#); *Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007), *Indiana Dep't of Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

Taxpayer protests denial of rental exemption and subsequent imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer, a single-member LLC, purchased an aircraft but did not pay sales tax on the purchase, claiming an exemption for rental or lease to others. The Indiana Department of Revenue ("Department") reviewed the exemption claim and determined that taxpayer did not qualify for the exemption. The Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protested the assessment. A hearing was held and a Letter of Findings denying Taxpayer's protest ensued. Taxpayer requested a rehearing on the basis that relevant facts relating to the protest were now available. The Department granted the rehearing. This Supplemental Letter of Findings results. Additional facts will be provided as necessary.

I. Sales and Use Tax – Imposition on Aircraft Purchase.

DISCUSSION

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(b); *Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes a use tax on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC § 6-2.5-3-2; [45 IAC 2.2-3-4](#). IC § 6-2.5-3-4(a)(2) allows for a use tax exemption for property that is acquired in a transaction that is exempt from sales tax under IC § 6-2.5-5, and the property is being stored, used, or consumed for the purpose for which it was exempted.

The rental and leasing exemption is found at IC § 6-2.5-5-8 (amended July 1, 2007), which states:

(a) As used in this section, "new motor vehicle" has the meaning set forth in [IC 9-13-2-111](#).

(b) Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

(c) The following transactions involving a new motor vehicle are exempt from the state gross retail tax:

(1) A transaction in which a person that has a franchise in effect at the time of the transaction for the vehicle trade name, trade or service mark, or related characteristics acquires a new motor vehicle for resale, rental, or leasing in the ordinary course of the person's business.

(2) A transaction in which a person that is a franchisee appointed by a manufacturer or converter manufacturer licensed under [IC 9-23](#) acquires a new motor vehicle that has at least one (1) trade name, service mark, or related characteristic as a result of modification or further manufacture by the manufacturer or converter manufacturer for resale, rental, or leasing in the ordinary course of the person's business.

(3) A transaction in which a person acquires a new motor vehicle for rental or leasing in the ordinary course of the person's business.

(d) The rental or leasing of accommodations to a promoter by a political subdivision (including a capital improvement board) or the state fair commission is not exempt from the state gross retail tax, if the rental or leasing of the property by the promoter is exempt under [IC 6-2.5-4-4](#).

(e) This subsection applies only after June 30, 2008. A transaction in which a person acquires an aircraft for rental or leasing in the ordinary course of the person's business is not exempt from the state gross retail tax unless the person establishes, under guidelines adopted by the department in the manner provided in [IC 4-22-2-37.1](#) for the adoption of emergency rules, that the annual amount of the lease revenue derived from leasing the aircraft is equal to or greater than:

(1) ten percent (10[percent]) of the greater of the original cost or the book value of the aircraft, if the original cost of the aircraft was less than one million dollars (\$1,000,000); or

(2) seven and five-tenths percent (7.5 [percent]) of the greater of the original cost or the book value of the aircraft, if the original cost of the aircraft was at least one million dollars (\$1,000,000).

The rental exemption set out in IC § 6-2.5-5-8 is further explained in [45 IAC 2.2-5-15](#), which states:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased.

When a taxpayer claims it is entitled to a tax exemption, it bears the burden of proving that the terms of the exemption have been met. *Indiana Dep't. of Revenue v. Interstate Warehousing*, 783 N.E.2d 248, 250 (Ind. 2003). The Department will strictly construe the exemption statutes against the taxpayer claiming the exemption. *Id.*

The above exemption, therefore, requires compliance with three elements. One of these requirements is that the Taxpayer must be engaged in the reselling, renting, or leasing of such property in its regular course of business.

Before and during the protest, the Department attempted to verify the exempt use of the aircraft from the purchase date, it requested that Taxpayer provide documentation that would substantiate whether Taxpayer was leasing its aircraft in the regular course of its business. The requests were for complete, detailed flight logs, lease agreements, a statement of rental rates, evidence of a rental stream and remittance of sales tax on the rental stream, and other relevant documentation. Some documentation was provided during the hearing process, but it was either inadequate or contradictory. The Letter of Findings denied Taxpayer's protest on the basis that Taxpayer had not provided the requisite documentary evidence.

Taxpayer, under new representation, requested a rehearing on the protest, which was granted. Again, when a taxpayer claims it is entitled to a tax exemption, it bears the burden of proving that the terms of the exemption have been met. *Indiana Dep't of Revenue v. Interstate Warehousing*, 783 N.E.2d 248, 250 (Ind. 2003). The Department will strictly construe the exemption statutes against the taxpayer claiming the exemption. *Id.*

At rehearing, Taxpayer provided all the required documentation. Taxpayer properly documented the use of its aircraft and the rental rates charged, and clarified the terms of its insurance policy. Taxpayer also completed its remittance of sales tax on the rental stream of the aircraft for 2007.

Of particular relevance is IC § 6-2.5-5-8(e). As this subsection plainly states, it will only apply after June 30, 2008. However, while not controlling for an aircraft purchased in 2006, it is a useful guide in the instant case. Here, the aircraft in question was purchased for over four-hundred and forty-five thousand dollars (\$445,000). As provided by IC § 6-2.5-5-8(e)(2), after June 30, 2008, the annual amount of lease revenue derived from the leasing of the aircraft would need to be equal or greater than ten percent of the greater of the original cost or the book value of the aircraft in order for Taxpayer to qualify for the exemption.

Taxpayer's aircraft was purchased September 1, 2005. The purchase price was \$145,000. Taxpayer reported total sales of \$5,208 in 2005 with sales tax due of \$312.48. For 2006, Taxpayer reported \$18,755 in sales, and \$1,125.30 in sales tax due. For 2007, Taxpayer reported \$29,216.67 in sales and \$1,753 in sales tax due. Considering the amount of revenue collected, Taxpayer meets the ten percent lease-revenue requirement which will take effect after June 30, 2008, as described by IC § 6-2.5-5-8(e)(2).

Therefore, in addition to the information regarding the revenue stream, Taxpayer has, as stated above, provided other documentation supporting its position that it leased the aircraft in the ordinary course of its business, as required by IC § 6-2.5-5-8(b). Again, while the ten percent standard described by IC § 6-2.5-5-8(e)(2) will not take effect until after June 30, 2008, it is a useful guideline which Taxpayer satisfies. When taken into account with the other documentation Taxpayer has provided, Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained upon rehearing.

Posted: 04/30/2008 by Legislative Services Agency
An [html](#) version of this document.